

REMARKS

Summary

Claims 1-10, 12-19, 28 and 29 stand in this application. Claim 11 has been canceled. Claims 20-27 have been withdrawn. Claims 1, 7, 14 and 28 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested

Claim Objections

Claims 14 and 28 have been objected to for informalities. Applicant respectfully requests removal of the claim objection in light of the above amendments.

35 U.S.C. § 102

Claims 1, 2, 7, 8, 10, 14-18, 28 and 29 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,317,834 to Gennaro et al. (hereinafter "Gennaro"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 7, 14 and 28 in order to facilitate prosecution on the merits.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. See MPEP § 2131, for example. Applicant submits that Gennaro fails to teach each and every element recited in claims 1, 2, 7, 8, 10, 14-18, 28 and 29 and thus they are patentable over Gennaro.

Gennaro arguably discloses an authorization system that uses three different data types of authentication: e.g. a personal identifier, a set of challenge questions, and a biometric sample. To gain access to a system, an individual is arguably required to provide the identifier, respond correctly to a subset of the challenge questions, and provide a current biometric sample. Gennaro, col. 9, line 57 to col. 10, line 16. That is, Gennaro requires **each** of the three different types of data. If any of the three authentication data types fails or is not available, the user is not authenticated.

Therefore, with respect to claim 1, Gennaro fails to teach, at least two elements of claim 1. Claim 1, as amended, recites, in relevant part:

a first processing unit to determine whether second authentication data received via the at least first input mechanism matches a subset of the first multi-factor authentication data, the *second authentication data associated with N authentication factors of N different types where N is less than Z*;

the first processing unit to *authenticate using the subset of the stored first multi-factor authentication data where less than Z authentication factors are available for authentication*;

First, Gennaro fails to teach second authentication data associated with N authentication factors of N different types where N is less than Z. Instead, Gennaro teaches at least three different types of authentication data: a user identifier, a set of challenge questions with accompanying answers, and a biometric sample. For any particular authentication session, Gennaro teaches that the user must still provide the identifier, and the biometric sample, and must answer a subset of the challenge questions. That is, the user must still provide a complete set of three different authentication data types. In contrast, according to claim 1, the second authentication data may contain fewer than Z authentication data types.

Second, Gennaro fails to teach the first processing unit to authenticate using the subset of the stored first multi-factor authentication data where less than Z authentication factors are available for authentication. Instead, as discussed above, Gennaro requires all authentication data types in order to authenticate a user. In contrast, the claim subject matter authenticates using the subset of the stored first multi-factor authentication data where less than Z authentication factors are available for authentication. This allows a user to be authenticated, for example, if the biometric data input mechanism is inoperative.

Consequently, Gennaro fails to disclose all the elements of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2-6, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Gennaro.

Claims 7, 14 and 28 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 7, 14 and 28 are not anticipated and are patentable over Gennaro for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 7, 14 and 28. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2, 8, 10 15-18, and 29 that depend from claims 7, 14 and 28, and therefore contain additional features that further distinguish these claims from Gennaro.

35 U.S.C. § 103

Claims 4, 6, 12, 13 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gennaro and further in view of U.S. Patent 5,070,479 to Nakagawa (hereinafter “Nakagawa”).

Claims 3, 5 and 9 were rejected under 35 U.S.C. § 103(a) as being obvious over Gennaro in view of U.S. 7,000,829 to Harris et al (hereinafter “Harris”). Applicant respectfully traverses the rejections, and requests reconsideration and withdrawal of the obviousness rejections.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

If an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. See MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 3-6, 9, 12, 13 and 19 that depend from claims 1, 7 and 14, and therefore contain additional features that further distinguish these claims from the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Conclusion

For at least the above reasons, Applicant submits that claims 1-10, 12-19, 28 and 29 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

It is believed that claims 1-10, 12-19, 28 and 29 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

Appl. No. 10/823,067
Response Dated July 21, 2008
Reply to Office Action of April 21, 2008

Docket No.: 1020.P18444
Examiner: Kane, Cordelia P.
TC/A.U. 2132

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account 50-4238.

Respectfully submitted,

KACVINSKY LLC



Robert V. Racunas, Reg. No. 43,027
Under 37 CFR 1.34(a)

Dated: July 21, 2008

4500 Brooktree Road, Suite 102
Wexford, PA 15090
(724) 933-5529